M1035N

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service
Food and Drug Administration

Refer to: CFN 1116776
CFN 1150015

Baltimore District
900 Madison Avenue
Baltimore, Maryland 21201
Telephone: (410) 962-4040

June 27, 1997

WARNING LETTER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Alexander P. Dyer, President
The BOC Group, Inc.
100 West Tenth Street
Wilmington, Delaware 19891

Dear Mr. Dyer:

The Food and Drug Administration (FDA) conducted inspections of your BOC Gases, Inc., Hopewell, Virginia and Richmond, Virginia facilities on May 30, 1997 and June 2 - 3, 1997, respectively. During the inspections, it was determined that your Hopewell facility manufactures bulk Carbon Dioxide that is distributed as "Carbon Dioxide U.S.P.," a medical gas, by your Richmond facility. We have determined that the Carbon Dioxide is intended for human drug use and meets the definition of a drug under Section 201(g) of the Federal Food, Drug, and Cosmetic Act (the Act). The article, Carbon Dioxide, is misbranded within the meaning of Section 502(o) of the Act, in that it was manufactured at your Hopewell facility, an establishment not duly registered under Section 510(c) and (d) of the Act, and the article has not been listed as required by Section 510(j).

We acknowledge receipt of your letter dated June 16, 1997, in response to the FDA inspection conducted at your Richmond facility. We have reviewed your letter and do not agree with your response to FDA 483 item 3b. The fact that your Richmond, Virginia facility, or other facility receiving Carbon Dioxide intended for human drug use, tests the drug product to show it meets U.S.P. requirements, does not exempt BOC Gases of its responsibility to register all drug manufacturing facilities as required by Section 510 of the Act, and to list the article in accordance with Section 510(j).

We are aware that over the past several years, there has been a litany of correspondence (copies enclosed) between AIRCO Medical Gases (BOC Gases), the FDA, and Mark L. Itzkoff of Keller and Heckman, regarding the registration and listing of BOC Gases bulk Carbon Dioxide manufacturing facilities. In an August 29, 1989 letter from Mr. John Willenbrock, BOC Gases informed FDA that it had determined that its Carbon Dioxide plants do not require registration

with the FDA, as they manufacture no finished pharmaceuticals for delivery to users. In the same letter, however, BOC Gases admitted that some of its bulk Carbon Dioxide is sold to cylinder filling plants which distribute the article for medical use.

Subsequently, FDA advised BOC Gases by letters dated June 23, 1992, January 19, 1993, and a Warning Letter dated February 19, 1993, that because a portion of its bulk Carbon Dioxide was intended for human drug use, BOC Gases Carbon Dioxide met the definition of a drug under Section 201(g) of the Act. In addition, BOC Gases was advised that it is required to register its Carbon Dioxide manufacturing/packing establishments, list Carbon Dioxide as a drug product, and comply with all other applicable requirements of the Act and its regulations. The FDA further advised BOC Gases that its Carbon Dioxide is not subject to the requirements of the Act, only if the liquid Carbon Dioxide is labeled "For Industrial Use Only" and not sold to firms for filling and distribution for medical uses. The most recent FDA letter, dated September 20, 1994, informed Mr. Itzkoff that because BOC Gases distributes Carbon Dioxide to firms which distribute the article for medical use, BOC must comply with the requirements of the Act. Currently FDA has not changed its position regarding your requirement to register Carbon Dioxide manufacturing facilities and list Carbon Dioxide as a drug product. This is FDA's formal position.

We are aware that shipments of industrial grade Carbon Dioxide are also received at your Richmond facility from your Baltimore, Maryland production facility, and that the Carbon Dioxide is not certified to be medical grade. Your Richmond, Virginia facility can not assure that the industrial grade Carbon Dioxide it receives from your suppliers to manufacture a drug for human use meets U.S.P. and/or your specifications upon receipt. Therefore, the article, Carbon Dioxide U.S.P., is adulterated within the meaning of Section 501(a)(2)(B) of the Act, in that it is a drug, and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current GMPs to assure that such drug meets the requirements of the Act as to the safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

The above listed violations are not intended to be an all-inclusive list of deficiencies at your facilities. It is your responsibility to assure that your establishments are in compliance with all requirements of the federal regulations. Federal agencies are advised of the issuance of all Warning Letters about drugs and devices so that they may take this information into account when considering the award of contracts.

By copy of this letter, we are advising the Health Care Financing Administration (HCFA) that our inspections revealed significant deviations from the Act. They may elect to defer or discontinue payment for any health care product in violation of state or federal law.

You should take prompt action to correct these deviations. Failure to do so may result in regulatory action without further notice, such as seizure and/or injunction.

You should notify this office in writing, within 15 working days of receipt of this letter, of specific steps you have taken to correct the noted violations and to prevent their recurrence. If corrective action cannot be completed within 15 days, state the reason for the delay and the time within which the corrections will be completed.

Your reply should be sent to the Food and Drug Administration, Richmond Resident Post, 10710 Midlothian Turnpike, Suite 424, Richmond, Virginia 23235, to the attention of Scott J. MacIntire, Compliance Officer.

Sincerely,

Elaine Knowles Cole
Director, Baltimore District

Enclosures

cc: Ms. Debbie Capuano
Manager, FDA Compliance
BOC Gases, Inc.
575 Mountain Avenue
Murray Hill, New Jersey 07974

Virginia Board of Pharmacy
6606 West Broad Street
Richmond, VA 23230-1717

bcc: EI file, HFR-MA1, HFR-MA200, HFR-MA240 (Simmons), HFR-MA250 (Wiedman), HFA-224, HFC-210, HFI-35 (purged), HFC-240, HFD-300, HFR-MA2545, HFR-MA295, HFR-MA150, HFR-MA350

Mr. Dennis Carroll
Associate Regional Administrator
HCFA
Room 3100
3535 Market Street
Philadelphia, PA 19101 (purged)

TRACKING #: 97-BLT-40